

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:21-CV-338-M

KIMBERLY ERWAY, as Parent of )  
Minor Child J. E.<sup>1</sup>, )  
PLAINTIFF, ) DEFENDANTS' MOTION TO DISMISS  
V. ) FOR LACK OF SUBJECT-MATTER  
UNITED STATES TRANSPORTATION ) JURISDICTION AND FAILURE TO  
SECURITY ADMINISTRATION, ) STATE A CLAIM  
UNITED STATES OF AMERICA, and )  
JANE DOE, an Employee of the United )  
States Transportation Security )  
Administration, )  
DEFENDANTS. )  
)

Defendants Transportation Security Administration (TSA) and the United States move to dismiss for lack of subject matter jurisdiction Plaintiff Erway's claim for intentional infliction of emotional distress under the Federal Tort Claims Act and for indeterminate injunctive relief.<sup>2</sup> Defendants also move to dismiss the request for an injunction for failure to state a claim. Fed. R. Civ. P. 12(b)(6).

A memorandum in support is filed contemporaneously.

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<sup>1</sup> The minor child's initials are used in compliance with Rule 5.2(a)(3). See Richardson v. United States, No. 5:08-cv-620-D, (DE 29) (E.D.N.C. Mar. 1, 2010).

<sup>2</sup> DOJ written authorization to represent individual defendants in Bivens actions is required. The USAO-EDNC does not have authority to represent the unserved Defendant Doe in this case. Accordingly, this motion is filed only on behalf of TSA and the United States.

Respectfully submitted this 1st day of November, 2021.

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Acting United States Attorney

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 1st day of November, 2021, served a copy of the foregoing upon the below-listed party or parties electronically using the CM/ECF system or by placing a copy of the same in the U.S. Mail, addressed as follows:

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